



*Federal Register*  
May 19, 2003

Department of Health and Human Services  
Centers for Medicare and Medicaid Services

42 CFR Parts 412 and 413

Medicare Program: Proposed Changes to Hospital Inpatient Prospective Payments System  
and Fiscal Year 2004 Rates: Proposed Rule

### What The CMS Proposed Rule Would Do

- In the Balanced Budget Act (BBA) of 1997, Congress excluded dental and podiatric residents from a cap it imposed on allopathic and osteopathic residency positions. It also allowed hospitals to collect indirect GME (IME) payments for residents training in non-hospital settings in order to expand the number of **dental** and other residency positions for residents who train in non-hospital sites. An Institute of Medicine (IOM) report at the time showed that a shortage of dental residency slots was hindering patient access to much needed dental care, particularly among indigent populations.
- Under the rule proposed in the May 19 *Federal Register*, the Centers for Medicare and Medicaid Services' (CMS) interpretation of Congressional intent effectively renders meaningless the action Congress took in the BBA because the new interpretation would make it nearly impossible for hospitals to include residents, dental or otherwise, training in a non-hospital setting on the cost report.
- The CMS proposed rule, in essence, would repeal the GME changes that Congress intended by imposing a new requirement on hospitals that a hospital must have continuously incurred the costs of a training program in a non-hospital setting from the date that the training program first began and not from the effective date of a written agreement as currently required under the regulations.
- Many dental GME programs began 20 or 30 years ago or longer, meaning that under the proposed rule, a hospital would have had to incur the costs for those programs for decades, even though there was no GME funding then.
- CMS claims that this requirement of continuous funding by a hospital is supported by existing regulations that prohibit the redistribution of costs from the community (i.e., a residency training program that had financially been supported by a dental school) to government (i.e., a hospital receiving federal funds through Medicare GME). However, these regulations pertain to a different aspect of GME funding. The Supreme Court determined that these community support regulations do not allow a hospital to include in its base year, which is 1984, educational and training costs that had been borne by the community. As such, the high court's decision is limited to the calculation of costs for a hospital's base year.

- The principles of redistribution of costs and community support have never been applied by CMS in the non-hospital setting. Indeed, Medicare has allowed hospitals to claim direct GME (DGME) payments for residents training in non-hospital settings since 1987, over 16 years ago, and never applied these principles. BBA'97 allowed hospitals to collect indirect GME (IME) as well.
- Now, 16 years later, CMS is proposing to apply this completely new requirement, retroactively, to recoup from hospitals GME money that has already been paid, reviewed, and approved by both CMS and its fiscal intermediaries.

### **The Unreasonableness of the CMS Proposed Rule**

Since the Balanced Budget Act passed in 1997, the American Dental Education Association (ADEA) and its outside counsel have been in frequent contact with CMS officials regarding how provisions of the BBA affecting dental residencies should be interpreted. CMS officials have never discussed the requirement of continuous funding by a hospital from the beginning of a program's existence in the scores of conversations and correspondence that have occurred over the years.

- Indeed, CMS specifically enumerated the requirements for GME funding of these dental training programs in a letter to ADEA in March 1999. There is no mention of the principles of redistribution of costs and community support in that letter which stated that hospitals could include dental residents training in a non-hospital setting on their cost report.
- Since 1997, CMS and its fiscal intermediaries have reviewed and approved in writing a number of arrangements between dental residency programs and hospitals, including arrangements between dental residency programs and hospitals in separate states, when it was obvious that the hospital was only newly supporting these programs under the written agreement as required by CMS regulations.
- In 2000-2001, CMS participated in discussions with another federal agency, the Health Resources and Services Administration (HRSA), and ADEA regarding how to transition from HRSA's funding of certain dental training programs to the programs being funded by hospitals receiving GME monies. This is yet another example of how knowledgeable CMS was that dental residency programs had received funding from sources other than hospitals in the past, but that CMS was not concerned.
- Dental schools, like medical schools, now rely on GME funding, as was anticipated by Congress when it passed the GME provisions in the BBA, to operate their non-hospital site training programs.

The deadline for commenting on the proposed rule is July 18, 2003. CMS will issue the final rule on or before August 1, 2003, with an effective date of October 1, 2003.

***For additional information, contact Jack Bresch, Director of the ADEA Center for Public Policy and Advocacy at 202/667-9433 or [BreschJ@ADEA.org](mailto:BreschJ@ADEA.org)***